



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/151623

PRELIMINARY RECITALS

Pursuant to a petition filed August 26, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Sheboygan County Department of Human Services in regard to Child Care, a hearing was held on September 26, 2013, at Sheboygan, Wisconsin. The record was held open after the hearing to allow the Petitioner to submit additional evidence. On September 30, 2013, the Petitioner submitted additional documentation. The record closed on September 30, 2013.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover child care benefits overissuance of \$558.75 from the Petitioner for the period of May 5, 2013 – May 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Mitch Birkey

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.

2. On July 1, 2013, the agency issued a Child Care Overpayment Notification to the Petitioner informing her that the agency seeks to recover an overissuance of child care benefits in the amount of \$558.75 for the period of May 5, 2013 – May 31, 2013. The notice also informs the Petitioner of the right to request an appeal by filing a request for hearing with the Division of Hearings and Appeals within 45 days of the date of the notice.
3. On August 26, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning an overissuance of child care benefits must be filed within 45 days of the date of the action. Wis. Stats. § 49.195 and Wis. Admin. Code DCF Chapter 101. The Petitioner's appeal was filed 57 days after the date of the action. As dicta, I note that even if the Petitioner's appeal had been timely, the evidence she submitted was insufficient to rebut the agency's assertion that she was not in an approved activity during the period of the overpayment. The Petitioner's evidence did not establish that she was working or that she was paid for work performed during the period of May 5, 2013 – May 31, 2013. The Petitioner's self-directed job search during that time is not an approved W-2 activity. Therefore, the agency's determination would have been upheld even if the Petitioner had filed her appeal in a timely manner.

CONCLUSIONS OF LAW

The Petitioner's appeal was untimely.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

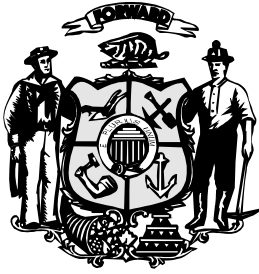
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of December, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on December 6, 2013.

Sheboygan County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud